

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MARY WOLSKI,

Plaintiff,

v.

THE CITY OF ERIE,

Defendant.

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Case No. 1:08-cv-289

**ORDER**

AND NOW, to wit, this 3rd Day of August, 2012, the Plaintiff having filed a motion for attorney fees [51] in the above-captioned matter, and it appearing that said motion is premature in light of the Defendant's pending motion [50] for judgment as a matter of law under Fed. R. Civ. P. 50(b) and/or for a new trial under Fed. R. Civ. P. 59,<sup>1</sup>

IT IS ORDERED that the Plaintiff's motion for attorney fees [51] shall be, and hereby is, DENIED without prejudice to be reasserted within fourteen (14) days following entry of this Court's order adjudicating the Defendant's post-trial motions.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN  
United States District Judge

Cm: All counsel of record.

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<sup>1</sup> See *Bailey v. County of Riverside*, 414 F.3d 1023, 1024 (9<sup>th</sup> Cir. 2005) (requirement under Fed. R. Civ. P. 54(d)(2)(B) that motion for attorneys' fees be filed "no later than 14 days after entry of judgment" is tolled pending the outcome of post-trial motions under Rule 50 or 59, since those motions suspend finality of the underlying judgment). *Accord Gaskins v. BFI Waste Services, LLC*, 281 Fed. Appx. 255, 261 (4<sup>th</sup> Cir. 2008); *Miltimore Sales, Inc. v. International Rectifier, Inc.*, 412 F.3d 685, 687 (6<sup>th</sup> Cir. 2005); *Weyant v. Okst*, 198 F.3d 311, 315 (2d Cir. 1999).